

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-4047

PROFESSIONAL ENGINEER

CALIF. - ME. - N. J. - TEX.
CONN. - MD. - N. Y. - VT.
DEL. - MASS. - OHIO - VA.
ILL. - MICH. - PA. - W. VA.
IND. - MINN. - R. I.

FRANKLIN D. COOPER

CONSULTING ENGINEER

321 LANSDOWNE ROAD

DEWITT 14, NEW YORK 13214

TELEPHONE GIBSON 6-2690 315-446-2690

LAND SURVEYOR

CALIF. - MINN.
CONN. - N. J.
DEL. - N. Y.
MASS. - OHIO
IND.

Clerk's Office
U. S. Court of Appeals
United States Court House
Foley Square
New York, N. Y.

Docket No. 76-4047

Gentlemen:

Transmitted herewith, please find four copies appellant's brief and joint appendix in the above subject matter.

The index of the record refers to the appellants objection and alternative computation, and these with exhibit letters are provided for ready reference.

At the request of the opposing counsel, three copies of the above are being served on the opposing counsel, Appellate Section of the Tax Division, Department of Justice.

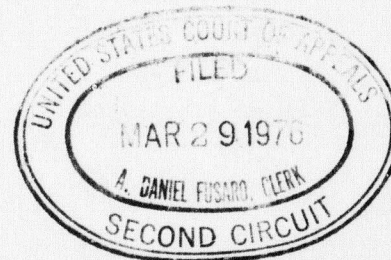
In addition, copies of data which was not required to amend the Tax Court record are also included to prove that there was no necessity to amend the record as requested by the appellants.

This data is also being sent to the opposing counsel.

Respectfully submitted,

F. D. Cooper
F. D. Cooper

Incl.: 4 copies brief & index
4 copies objection & alternative computation
4 copies exhibit price letters
4 copies amend record data



B
P/s

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

FRANKLIN D. COOPER and
EVELYN L. COOPER

Petitioners-Appellants,

V.

COMMISSIONER OF INTERNAL REVENUE

Respondent-Appellee.

Docket No. 76-4047

BRIEF FOR PETITIONERS

Preliminary Statement

Judge William A. Goffe entered a decision in Docket No. 9211-74 United States Tax Court on January 19, 1976, which is being appealed.

Material Pleadings

On their joint income tax returns for 1971 and 1972, petitioners claimed straight line depreciation each year on the Carl Zeiss Stereo-comparator PSK 2 based upon a 3-year useful life and a cost basis.

This cost basis included air freight, import duty, sales tax, dealers commission, and makers profit above resale value.

Due to circumstances beyond their control, the petitioners were denied use of the equipment in 1971 and 1972 by others.

The Commissioner disallowed the deduction claimed for each year because the comparator was neither in petitioners possession nor placed in service by petitioners during the taxable years in which depreciation was claimed, and was upheld by the United States Tax Court.

A fund was created to purchase the comparator on November 16, 1970; and payment was made out of this fund for the comparator.

The air freight, import duty, sales tax, dealers commission, and makers profit above resale value were included in the depreciation which was disallowed by the Commissioner.

These expense items are sufficient to offset the disallowed depreciation.

No penalties and other business taxes are possible under these conditions.

The comparator was sold on the basis of separate items including air freight, import duty, sales tax, and dealers commission and makers profit are computed from the declared value for import duty levy and resale value.

An objection and alternative computation to that filed by the Commissioner was made by the petitioners and filed with the Tax Court, and this remains the same except for the sales tax which has changed due to the fact that the dealer transferred the comparator as part of his inventory to Carl Zeiss Inc. of New York on ceasing to be the sole distributor ^{for} the maker in the United States on December 31, 1975.

Findings of Fact

As part of a photogrammetric system, a fund was created on November 16, 1970, to prepay for a PSK Carl Zeiss Stereo Comparator; and shipment was to be direct in bond to DSWitt, N. Y., with import duty to be paid at the Syracuse, N. Y., customs office with prepayment of the commission to Keuffel & Esser Company as the dealer.

After being advised that the PSK comparator with dials was available by the maker, the last instrument was sold to a far east government since only one day had been allowed to place the order.

The dealer on his own advised that another instrument with dials could be built, but the manufacturer would not agree to do so.

The dealer suggested that a mono comparator model PK could be built with the second stage built in later.

The maker stated that this was not possible, as this would have to be done at the factory.

The dealer was to expedite matters so that the order would be a 1971 order so that the instrument could be used in 1971.

Letters from both the maker and dealer were received stating that the order was a 1971 order.

More than 6 months delay resulted in connection with the peripheral equipment which had to be made compatible with the balance of the system which was not readily adaptable.

Carl Zeiss Inc. proposed that the PSK 2 comparator displayed at the International Society of Photogrammetry Congress at Ottawa, Canada, could be shipped in bond to Syracuse, N. Y., with a saving of \$1,400.00 in air freight.

This was to be done immediately after the exhibits at the convention were packed for return shipment.

This was possible according to both Canadian and United States regulations.

Canadian customs was unable to trace what happened to the comparator after it reached Montreal for shipment abroad.

The dealer then promised direct shipment in September and November of 1972 from Oberkochen, Germany, to Syracuse, New York, in bond.

Instead, the dealer had the comparator shipped to himself in Morristown, New Jersey, and took title to it in spite of the fact that he had been paid both the factory price and duty.

The dealer then advised that he was only being paid for the equipment, but he still had title to the equipment even though he did not pay for it with his money.

The dealer then advised that there was a balance of \$34,918.73 which had to be paid within 90 days.

This was not possible due to the short time allowed for payment.

The amount due included \$8,081.00 import duty, New Jersey sales tax, air freight \$1,400.00 (to have been paid by the maker), and commission to the dealer on \$98,481.73.

The agreement with Carl Zeiss Inc. included no air freight, import duty (to be paid by the buyer), or sales tax since shipment was to be direct.

The dealer opened a branch store in New York State, and there was a question whether New Jersey or New York sales tax was to be paid.

During the course of negotiations, the buyer mailed back to the dealer all original letters requesting them to be returned to him.

One of the letters was destroyed and never returned to him, as it stated that the order was a 1971 order.

No invoice was ever given to the buyer and the price was not finally fixed until several years elapsed.

The only negotiations which are valid are those made with the maker which required direct shipment to the buyer following prepayment.

The buyer was to pay the import duty with no sales tax as the purchase was made abroad.

The purchase was to be a 1971 purchase with the dealer being paid a commission.

Without the use of the equipment after paying the factory price and import duty in full, the cash flow was zero with no depreciation allowed and no profit.

The import duty and sales tax are a part of the price paid by the purchaser and unless they are allowed as expenses the income tax becomes a tax on a tax.

The profit to the dealer is based on the entire price including the 3 items which were not chargeable as agreed upon by the maker.

In order to be able to bid on work that involves first-order mapping, it is necessary to own the equipment.

Due to the fact that mapping work is done by persons with limited capital, limited outlays can be made in advance.

The reason for this is that even large organisations do not make very considerable investment in equipment, as when conditions are unsettled it is almost impossible to dispose of equipment as hardly anybody knows how to use it.

Due to unsettled economic conditions especially as concerns the value of the dollar, the purchasing power is subject to inflation and any delay results in paying much higher prices with increased import duty.

Recent developments in the Photogrammetric Mapping business have required that those engaged in that work be professional engineers or land surveyors depending upon the character of the mapping being done.

Since corporations of professional engineers and land surveyors hesitate in acquiring equipment for the reason given above, and due to the fact that the Federal Government has just required that competitive bidding must be engaged in by engineers and surveyors the difficulties become more pronounced than ever.

Without the opportunity of paying for equipment out of income or even being allowed the expenses involved with purchase and the fact that only mappers which individually own all their own equipment can bid, it is almost impossible to do first-order mapping as is required by present engineering and surveying work for civil works projects particularly those of the U. S. Government.

Individually-owned mapping operations are unable to obtain sufficient borrowed or equity capital from long-term loans to keep up-to-date and growing.

An owner-manager is unable to do so, and merges to obtain much-needed capital.

Conclusions of Law

The dealer never had title to the equipment, as is evidenced by the fact that he turned it back to Carl Zeiss Inc. of New York which is the maker.

Any and all conditions made by him regarding the sale of the equipment has always been in the hands of the maker, as was shown by the fact that the final disposition of the equipment to the buyer remained in his hands to the end.

The equipment was made for the buyer to be especially compatible with the balance of his photogrammetric system, and whether it was in his possession or placed in service by him was not the relevant issue as far as his bidding on government mapping projects was concerned.

The important factor was that the comparator was almost completely paid for by him even under the dealer's terms, and it was possible for him to bid on government projects with the certainty in the event that he was the successful bidder he would be able to perform the work.

Judicial notice is invited to letter from National Society of Professional Engineers and status report on the NSPE antitrust case regarding U.S. District Court and Court of Appeals of the District of Columbia regarding logic and reason concerning competitive bidding.

This letter and report are included in the appendix merely to support the contention that the equipment is the only way of supplying the quality and excellence of mapping for projects on which the U.S. Government expends very large amounts of public funds.

The availability of mapping work is dependent upon many factors, and in particular public works are the main source of work for mapping.

Since there is a lead time of 10 months or more for a comparator to be made, and the fact that in most cases aerial photography can be done only in the spring and fall because of snow and foliage covering the terrain which must be visible to measure the relief most mapping contracts are controlled by such timing.

To speak of placing equipment in service immediately is dependent upon the availability of work and the conditions controlling its actual performance.

With off the shelf equipment to manufacture products in a factory the law regarding depreciation on a normal wear and tear basis is equitable, but in the case of the comparator it can pay for itself on one large mapping project providing the owner is able to obtain the work by being the low bidder.

This is the main reason that most mappers will not buy a comparator, as the investment may never be recovered to a considerable degree for a long time or it may be readily recovered in full quite easily.

Opinion

The objection and alternate computation submitted by the appellants remain intact except for the sales tax which was reduced from 7% to 4% by Carl Zeiss Inc. of New York.

This revision can be offset readily by the excess remaining in the makers proceeds which were in excess of the amount required to cover the depreciation by expenses.

There is still no profit from business for 1971 and 1972, and also no reason for taxes or penalties.

Judgment Or Part Thereof Appealed From

The entire judgment is appealed from on the basis that unless the mapper is able to create the need for his mapping by actually initiating large projects to be financed, designed, and constructed by himself by borrowing vast sums of money which could only result in his owning them he is subject to uncertain conditions of supply and demand for his services.

To require that he be able to immediately create the opportunity for his being able to use the equipment is not possible, as even the process of bidding on work is largely dependent upon being able to determine what the traffic will bear which results after making numerous unsuccessful bids.

It is no longer possible to rely upon past performance solely to obtain work in mapping when the U.S. Government has made price the primary consideration with excellence or quality the second consideration.

The appellants exercised their free choice in spending their own money for equipment to be able to compete in a very competitive profession, and they did not keep part of their equipment money for themselves as a "loophole".

The choice concerns capital, because capital is nothing more than stored up labor: To the extent capital is invested in equipment - more capital is available to accomplish more work of better quality.

What better proof can be given than the appellants paid for the equipment from a fund which was for that purpose.

Franklin D. Cooper, pro se

321 Lansdowne Road

Dewitt, N. Y. 13214

Petitioners - Appellants

76-4047

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

FRANKLIN D. COOPER and
EVELYN L. COOPER

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent-Appellee.

Docket No. 76-4047

JOINT APPENDIX FOR PETITIONERS

Preliminary Statement

Judge William A. Goffe entered a decision in Docket No. 9211-74 United States Tax Court on January 19, 1976, which is being appealed.

Motion By Petitioners To Reopen Record

The Tax Court denied the motion by the petitioners to reopen the record in spite of the fact that the respondent had no objection to doing so, and the petitioners found that it was not necessary to do so as all evidence necessary was already a matter of record.

Appellants Index of Record

Documentary evidence indexed is presented merely to establish value as any other information except cost figures were objected to on the basis that the agreement was with the maker and not the dealer as specifically pointed out in the stipulation before trial which was signed by the appellants minutes before the trial began.

Index to Record

EXH 7-G Keuffel & Esser Company letter D. F. Schellens 12/15/71 prices
EXH 19-S Keuffel & Esser Company letter C. E. Sheaffer 7/7/72 prices
EXH 16-P Keuffel & Esser Company letter C. E. Sheaffer 4/7/72 prices
EXH 26-Z Keuffel & Esser Company letter D. L. Michael 5/10/73 prices
EXH 35-AI Keuffel & Esser Company letter D. L. Michael 12/4/74 price

OBJECTION AND ALTERNATIVE COMPUTATION

PROFESSIONAL ENGINEER

CALIF. - MD. - N. J. - TEX.
CONN. - ID. - N. Y. - VT.
DEL. - MASS. - OHIO - VA.
ILL. - MICH. - PA. - W. VA.
IND. - MINN. - R. I.

FRANKLIN D. COOPER

CONSULTING ENGINEER

321 LANGSDOWNE ROAD

DEWITT 14, NEW YORK

TELEPHONE GIBSON 6-2000

LAND SURVEYOR

CALIF. - MINN.
CONN. - N. J.
DEL. - N. Y.
MASS. - R. I.

January 1976

United States Tax Court
Washington, D. C.

Attention: Mr. Charles L. Casozza, Clerk of the Court

Docket No. 9211-74

Gentlemen:

Enclosed please find objection and alternative computation to that filed by the Commissioner of Internal Revenue in connection with Docket No. 9211-74.

I will attend the hearing at 10:00 a.m. on January 14, 1976, in Tax Court Courtroom, 3d Floor, 400 Second Street NW., Washington, D.C. 20217, to make my objection and give my alternative computation.

Respectfully submitted,

F. D. Cooper
F. D. Cooper

Incl. 1 original & 2 copies
Objection & alternative computation

BEST COPY AVAILABLE

Objection

The petitioners respectfully object to the respondent's computation on the basis that it does not include certain costs that were intended to be covered by the depreciation allowance which the court was asked to take judicial notice of by the petitioners.

These costs are so large that they are of the same order as the depreciation, and for the year 1971 they amounted to \$28,462.80 as compared to the disallowed depreciation of \$30,250.00 which results in no profit from the petitioner's business.

In order to obtain equipment with an actual value of \$60,650.00, it is necessary to expend \$37,831.73 for taxes, shipping, and dealers commission or copyright fee.

Since the equipment is not an off-the-shelf item, it is necessary to wait almost a year for it to be manufactured and pay for it in full before it is delivered.

Also, since the equipment is of foreign origin, the price is determined by the rate of exchange (selling price for bank transfers in the U.S. for payment abroad).

If the rate of exchange at the time of payment by the local dealer to the foreign manufacturer is different from that at the time the price is quoted, the price to the customer (as far as permitted by U.S. law or regulations) is adjusted to reflect the change in the exchange rate.

The shipping charge was to have been paid by the manufacturer, but this was not done resulting in a price which was \$1,400.00 higher.

When \$98,481.73 is paid for equipment which sells for \$60,650.00 at the factory, it is necessary to charge off the \$37,831.73 at the outset as the equipment couldn't be sold for \$60,650.00 by anybody else except the manufacturer at the factory.

Sold by anybody else except the manufacturer, the most that would be possible to obtain for the equipment would be about \$47,800.00.

For 1972 a reasonable allowance for this situation would be \$7,791.07 which with partial import duty, sales tax, and airfreight would amount to \$17,160.00 as compared to the disallowed depreciation of \$30,250.00 with no profit in either event.

The figures as shown in the attached alternative computation are the petitioners justification for the returns as filed by them for the years 1971 and 1972, as the equipment was to have been shipped to them directly by the manufacturer in bond with payment of the duty on arrival with no sales tax and prepayment to the manufacturer and dealer for the equipment and copyright fee (commission) respectively.

Attention is invited to one page of US customs Service information and 3 pages of alternative computation which are submitted to verify that no profit was or could be made in 1971 and 1972.

Not one but two instruments were promised to the petitioners in 1972, and the first which was to have been delivered to them in August may have been delivered to a governmental agency with no import duty or sales tax whatever.

In the event that this proves to actually be the case, it can only point-up the above arguments further about the costs which are just as real as the cost of the equipment itself.

No system of cost accounting can justify a piece of equipment which actually costs about \$60,000.00 being increased to \$120,000.00 by dealers charges on top of which are added federal and state income taxes.

Before the petitioners could possibly pay for equipment with no allowances whatever even the \$120,000.00 would be doubled, and the tax situation would be confiscatory to say the least.

Everybody would be allowed deductions but the petitioners who would be allowed none whatsoever with the entire burden of payment to be carried by them.

The petitioners are expected to submit in the face of severe measures when it is not possible for them to do so.

BEST COPY AVAILABLE

PROFESSIONAL ENGINEER

CALIF. - ME. - N. J. - TEX.
CONN. - MD. - N. Y. - VT.
DEL. - MASS. - OHIO - VA.
ILL. - MICH. - PA. - W. VA.
IND. - MINN. - R. I.

FRANKLIN D. COOPER

CONSULTING ENGINEER

321 LANSLOWNE ROAD

DEWITT 14, NEW YORK 13214

TELEPHONE GIBSON 6 2690

Telephone 315-446-2690

LAND SURVEYOR

CALIF. - MINN.
CONN. - N. J.
DEL. - N. Y.
MASS. - OHIO
IND.

Mr. Louis Firopato, Team Leader & Import Specialist
Cargo Building 8
J F K Airport, N. Y. 11430
Telephone 212-995-3329

Shipper: Carl Zeiss, 7082 Oberkochen/Wurttemberg, Postfach 1369 und 1380, West Germany

Importer: Keuffel & Esser Company, 20 Whippany Road, Morristown, N. J. 07960

Customs Broker: Airport Clearance Service, Inc., Building 80, J F K Airport, N. Y. 11430

Imported for: Franklin D. Cooper, 321 Lansdowne Road, DeWitt, N. Y. 13214

Equipment Imported: Zeiss PSK-2 Stereocomparator Serial No. 121348

Arrival: Immediate-delivery no. ID7108 equipment arrived 31 December 1972

Entry: Entry no. 258530 assigned 4 January 1973

Reference: Customs Brokers reference no. 93124

Valuation: \$57,721.00

Duty: \$8,080.99 paid follow-up to entry

Carrier: Freight Air Consolidation

Note: All information except entry no. supplied by Airport Clearance Service, Inc.,
to US Customs Service, Syracuse, N. Y., by telephone.

Dealers Prices

15 December 1971 FOB Morristown, N. J. (See letter 12/15/71 K & E Dieter F. Schellens)

Precision Stereo Comparator PSK-2

Comparator \$65,015.00

Ecomat 25,735.00

Total \$90,750.00 rate of exchange 3.25 German marks per US dollar
duty plus 10% import surcharge (in effect August to December 1971)
installation 20 hours @ \$18.00 per hour plus transportation &
instruction total \$400.00 not included

7 September 1972 FOB Morristown, N. J. (See letter 8/7/72 K & E Charles E. Sheaffer)

PSK 2 Stereocomparator \$60,940.00

Ecomat 21, basic equipment (1) 24,120.00

Total \$85,060.00

Facit - 4070 tape punch 3,570.00

\$88,630.00 F. O. B. Morristown, New Jersey

Reduction price instrument by \$1,400.00 (See letter 4/7/72 K & E Charles E. Sheaffer)

PSK 2 Stereocomparator \$60,000.00

Ecomat 21, basic equipment (1) 23,660.00

Total \$83,660.00

Facit - 4070 tape punch 3,570.00

\$87,230.00 F. O. B. Morristown, New Jersey

\$1,400.00 reduction not actually given in final price (See letter 5/10/73 K & E D. L. Michael)

Complete System Prices Analysis

5 October 1973 Dealers Pricing Complete System (See letter 5/10/73 K & E D. L. Michael)
PSK-2 Stereo Comparator with Ecomat 21 (includes \$1,400.00 airfreight) \$85,060.00
Facit 4070 tape punch 3,570.00
IBM 735 typewriter 1,560.00
Connector for IBM typewriter 942.00
Extra Program Plug 427.00
Installation and instruction 480.00
Total \$92,039.00
N. Y. Sales Tax 7% 6,442.73
Total \$98,481.73

Breakdown Pricing Complete System
Declared value Carl Zeiss, Inc., equipment \$57,721.00
Import duty 14% declared value 8,080.99
Price Keuffel & Esser Co. equipment 2,929.00
Airfreight Germany to USA 1,400.00
N. Y. sales tax 7% on \$92,039.00 6,442.73
Dealers copyright (commission) 21,908.01
Total \$98,481.73

Actual Value Equipment
Declared value Carl Zeiss, Inc., equipment \$57,721.00
IBM 735 typewriter) 1,560.00
Connector for IBM typewriter) Keuffel & Esser Co. 942.00
Extra program plug) 427.00
Total \$60,650.00

Taxes
Import duty 14% declared value \$8,080.99
N. Y. sales tax 7% on \$92,039.00 6,442.73
Total \$14,523.72

Shipping Charges
Airfreight Germany to USA \$1,400.00

Dealers Commission
Copyright fee \$21,908.01

Total Taxes, Shipping, & Copyright
Taxes \$14,523.72
Shipping 1,400.00
Copyright 21,908.01
Total \$37,831.73

Alternative Computation

1971 - No depreciation	
Dealers copyright (Commission)	\$21,908.01
Part import duty	6,554.79
Actual additional expenses	<u>\$28,462.80</u>
1972 - No depreciation	
Manufacturers profit (partial)	\$7,791.07
Part import duty	1,526.20
Sales tax	6,442.73
Airfreight	1,400.00
Actual additional expenses	<u>\$17,160.00</u>

If the above actual additional expenses are used in place of the disallowed depreciation, the petitioners had no profit for 1971 and 1972.

Manufacturers profit \$60,650.00 - \$47,800.00 = \$12,850.00 dealers resale used
No penalties and other business taxes are possible under these conditons.

Respectfully submitted:

Franklin D. Cooper
Franklin D. Cooper

Evelyn L. Cooper
Evelyn L. Cooper

Dated: January 4, 1976

321 Lansdowne Road
DeWitt, New York 13214

Telephone 315-446-2690

Prepared by: Franklin D. Cooper

EXHIBIT PRICE LETTERS

KEUFFEL & ESSER COMPANY

20 Whippany Road Morristown, New Jersey 07960

Tel.: 201-285-5113

Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
DeWitt, N. Y. 13214

December 15, 1971 / ns:71

Re: ZEISS Comparators

Dear Mr. Cooper:

I would like to refer to our telephone conversation and confirm to you the prices which I have mentioned:

- 1) Precision Mono-Comparator PEK-2
Comparator \$ 42,900.00
Ecomat 16,900.00

 \$ 59,800.00
 =====
- 2) Precision Stereo Comparator PSK-3
Comparator \$ 65,015.00
Ecomat 25,735.00

 \$ 90,750.00
 =====

The prices are FOB Morristown, N.J.

Delivery for the Mono-Comparator is 10 months
and for the Stereo-Comparator 7 months
after receipt of order.

The quoted price is based on a rate of exchange (selling price for bank transfers in the U.S. for payment abroad) of 3.25 German Marks per U.S. Dollar. Should the rate of exchange at the time of payment by K & E to CARL ZEISS for these items be different from this, the price to customer (as far as permitted by U.S. law or regulations) shall be adjusted to reflect the change in the exchange rate.

./.

BEST COPY AVAILABLE

Mr. Franklin D. Cooper

December 15, 1971 JH:ml

page - 2 -

The 10 % import surcharge as announced by President Nixon is included in the quoted price, but should a customer be required to pay the surcharge, the price will be adjusted accordingly.

The time needed for the installation of the complete equipment of either the Mono-Comparator or the Stereo-Comparator is approx. 20 hrs. For this we would charge our regular price for services at a customer's location of \$18.00 per hour plus transportation.

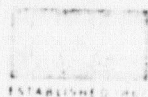
We are looking forward hearing from you and remain

sincerely yours,

KEUFFEL & ESSER COMPANY

Dieter F. Schellens

Dieter F. Schellens
Staff Consultant
Photogrammetry & Surveying



KEUFFEL & ESSER CO. 1521 N. Danville St. • Arlington, Va. 22201

PHOTOGRAMMETRIC SYSTEMS

TELEX 89-666 TWX 703-671-7928
TELEPHONE (703) 524-9000

DRAFTING • REPRODUCTION • SURVEYING • OPTICAL METROLOGY • AUDIOVISUAL • PHOTOGRAMMETRY

September 7, 1972

Mr. Franklin D. Cooper
321 Lansdowne Road
DeWitt, New York 13214

Dear Mr. Cooper:

Thank you for your latest letter addressed to our Morristown headquarters.

Please refer to my letter of June 13 where the slight change in plans for delivery of your Zeiss PSK 2 Stereocomparator was explained. We now expect delivery of your instrument in October. The prices remain the same as follows:

PSK 2 Stereocomparator	\$60,940.00
Ecomat 21, basic equipment (1)	24,120.00
Total	\$85,060.00
Facit - 4070 tape punch	3,570.00

We will stand by the offer quoted in our previous correspondence reducing the price of the instrument by \$1,400.00. It was our decision to send the pre-production PSK back to Germany to be installed at the University of Stuttgart which is near our factory so service will be no problem. This being the case we will prorate the discount between the PSK 2 and the Ecomat 21.

The prices are then:

PSK 2 Stereocomparator	\$60,000.00
Ecomat 21, basic equipment (1)	23,660.00
Total	\$83,660.00
Facit - 4070 Tape punch	3,570.00

F.O.B. Morristown, New Jersey

We understand you wish to have the PSK 2 delivered initially then the Ecomat 21 and Facit tape punch as cash becomes available. We are perfectly willing to go along with this arrangement. We are in a position to make the offer valid for the remainder of 1972.

If these conditions meet with your approval please drop us a line in order for us to be sure the equipment is wired, etc. for proper interfacing.

Main Office MORRISTOWN, N.J.

Branches: NEW YORK • PHILADELPHIA • BALTIMORE • ORLANDO • DETROIT • CLEVELAND • AKRON • CHICAGO • MILWAUKEE • ST. LOUIS
KANSAS CITY • WICHITA • DALLAS • HOUSTON • DENVER • LOS ANGELES • SAN FRANCISCO • SEATTLE • ANCHORAGE • TORONTO • MONTREAL
WASHINGTON, D.C.

Mr. Franklin D. Cooper
DeWitt, New York 13214

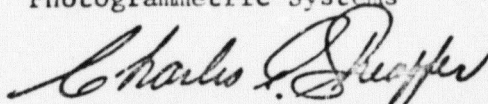
- 2 -

September 7, 1972

Thank you again for your continued interest and we look forward to hearing from you in the very near future.

Sincerely,

KEUFFEL & ESSER COMPANY
Photogrammetric Systems

A handwritten signature in cursive script, reading "Charles E. Sheaffer".

Charles E. Sheaffer
Regional Photogrammetric Engineer

CES:jr

P.S. Mr. Jordan is feeling well and is on his way back to Germany. He forwards his best regards.

KEUFFEL & ESSER CO. 1521 N. Danville St. • Arlington, Va. 22204

PHOTOGRAMMETRIC SYSTEMS

TELEX 89-666 TWX 703-671-7928
TELEPHONE (703) 524-9000

DRAFTING • REPRODUCTION • SURVEYING • OPTICAL METROLOGY • AUDIOVISUAL • PHOTOGRAMMETRY

April 7, 1972

Mr. Franklin D. Cooper
321 Lansdowne Road
DeWitt, New York 13214

Dear Mr. Cooper:

Enclosed please find new prices relative to the Zeiss PSK 2 and PEK 2. The time has come when the factory must know exactly how you wish to have your instrument set up, with particular reference to the output unit (punch cards, paper tape, magnetic tape)?

If you decide to place a prompt order for the PSK 2 Stereocomparator, Zeiss is prepared to make a special offer. Zeiss intends to show a PSK 2 and/or PEK 2 at the International Society of Photogrammetry meeting in Ottawa, Canada this July - August. We are offering this particular instrument with the price reduced by \$1400.00 as Zeiss is responsible for the transportation costs in any event. If you decide that a PEK monocomparator is as far as you want to commit yourself at this time, Zeiss may be in a position to bring over one PEK 2. In this case, the price would be reduced by \$950.00. We would be willing to exhibit the instrument with an appropriate sign "sold to Franklin D. Cooper, Aerial Surveys Inc."

My understanding of the situation is that you wish to ultimately own a Zeiss PSK 2 Stereocomparator, but to achieve this end you are purchasing major components as cash is available and the tax situation is favorable. We understand this condition and are willing to help in any way we can. However, it is getting rather urgent that we know the exact configuration of the instrument even if we are only going to begin delivery of major components. Please review the enclosed price list, decide upon the accessories you want, the output device you are eventually going to be tied to and please advise either Mr. Jordan or myself as soon as possible. This is particularly important if you want advantage of our offer concerning the instrument that will be on exhibit in Canada. If you decide to purchase only the PEK 2, the prices are

- | | |
|--|-------------|
| 1) PEK 2, basic equipment 1, Cat.#72-5365 | \$55,960.00 |
| 2) PEK 2, basic equipment 2, Cat.#72-5366 | 58,150.00 |
| 3) Accessories, please see PSK 2 price list. | |

Main Office MORRISTOWN, N.J.

Branches NEW YORK • PHILADELPHIA • BALTIMORE • ORLANDO • DETROIT • CLEVELAND • AKRON • CHICAGO • MILWAUKEE • ST. LOUIS
KANSAS CITY • WICHITA • DALLAS • HOUSTON • DENVER • LOS ANGELES • SAN FRANCISCO • SEATTLE • ANCHORAGE • TORONTO • MONTREAL
WASHINGTON, D.C.

Mr. Franklin D. Cooper
DeWitt, New York 13214

- 2 -

April 7, 1972

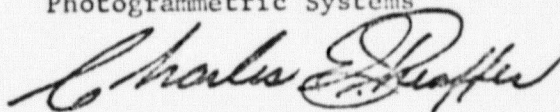
In our opinion, you would be realizing quite a savings plus rapid delivery on the finest instrument available if you would place a firm order for a PSK 2 and its accessories immediately.

Please be assured this particular instrument will be put up and taken down by a Zeiss factory technician. The instrument would subsequently be delivered directly to you and not to K & E.

We would appreciate your comments at your earliest possible convenience.

Sincerely,

KEUFFEL & ESSER COMPANY
Photogrammetric Systems



Charles E. Sheaffer
Regional Photogrammetric Engineer

CES:jr
Enclosures

KEUFFEL & ESSER COMPANY

20 Whippany Road / Morristown, New Jersey 07960

May 10, 1973

Mr. F.D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt 14, New York

Dear Mr. Cooper:

This will acknowledge receipt of your check for \$250 toward the PSK-2 Stereo Comparator bringing the total amount to \$51,200.00. We have also received your Chattel Mortgage dated May 5, 1973 and our Finance Department is investigating what we can do on this matter.

You have indicated the desire to receive the complete PSK-2 with Ecomat 21, facit tape punch, and IBM typewriter. The following is a statement of the pricing for the complete system.

PSK-2 Stereo Comparator with Ecomat 21	\$85,060.00
Facit 4070 tape punch	3,570.00
IBM 735 typewriter	1,560.00
Connector for IBM Typewriter	942.00
Extra Program Plug	427.00
Installation and Instruction	480.00
<u>Total</u>	<u>\$92,039.00</u>
N.Y. Sales Tax 7%	6,442.73
<u>Total</u>	<u>\$98,481.73</u>
<u>Less payments</u>	<u>51,200.00</u>
<u>Net Total</u>	<u>\$47,281.73</u>

As indicated above, the amount which you have asked us to mortgage would be \$47,281.73. In your Chattel Mortgage of May 5, you indicate you would pay for this balance as soon as possible, including the usual interest rate on the unpaid balance. We would be interested in hearing from you in regard to a payment schedule which would meet your requirements. In the meantime, our Finance Department will be working on a payment schedule which K & E can propose to you.

Mr. F.D. Cooper

-2-

May 10, 1973

In your letter of May 3, you indicate your reason for wanting a mortgage on your other equipment was in order to be sure you would not lose the comparator in the meantime. I would like to assure you that the PSK-2 has already been purchased by K & E from Zeiss to fill your order. It is now located in our Morristown facility. Again I would like to take this opportunity to thank you and to assure you our full cooperation.

Very truly yours,

KEUFFEL & ESSER COMPANY
Photogrammetry & Surveying

Don Michael

D.L. Michael
Marketing Manager

DLM:cj

cc: Mr. C. Sheaffer

KEUFFEL & ESSER COMPANY

20 Whippany Road/Morristown, New Jersey 07960

December 4, 1974

Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

Per your request by letter of November 9 and our telephone conversation of November 19, we would like to clarify certain questions regarding your order for the Zeiss PSK-2 Stereocomparator. The total amount of \$63,563.00 which you have applied toward the purchase of this instrument has been credited to your K&E Account No. 183186. Our records indicate this to be the total instead of the \$63,420.00 which you mentioned.

The PSK-2 which was ordered specifically for you was imported in January, 1973. The Serial No. is 121348. Duty in the amount of \$8,081.00 was paid by Keuffel & Esser Company when this instrument was imported. This instrument is crated and located here at K&E. It has never been used or leased.

The total purchase price for this instrument is \$98,481.73 F. O. B. Dewitt, New York as outlined in my letter of May 10, 1973. As you know, for quite some time now we have been attempting to arrange some type of financing which will be satisfactory to both parties. This fact together with the unsettled nature of the world economic scene require that K&E must respectfully request that you forward to us within the next thirty days the unpaid balance presently owing on the instrument in the amount of \$34,918.73. Upon receipt of this sum, K&E can then deliver and install the instrument to you without any further delay. In the event that we are not in receipt of the outstanding balance due within thirty days, K&E must regretfully consider your order as canceled and will refund to you the entire amount credited to your K&E account towards the purchase of the instrument. At any rate, it is important that your decision in this regard be made as soon as possible.

We are aware of your original interest in the Zeiss PSK which displayed the X-Y values by means of dials on the front panel. At the time you placed

... 2

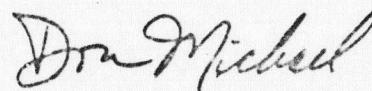
Mr. Franklin D. Cooper
December 4, 1974
Page 2

your order this model had been replaced with the new PSK-2 which displays the values electronically on a separate console called the Ecomat 21. We will shortly have one older model PSK available. This is a unit accepted as a trade-in on the new PSK-2. It will be completely rebuilt and will carry a 90 day warranty for its purchaser. In view of the balance still owed on the new instrument and your initial desire to obtain the dial type PSK, we wanted to call this new development to your attention. Although we cannot make a formal offer to you at this time because the dial type PSK is not yet in our possession, the total price should be less than \$50,000.00. My best estimate at this time is \$47,800.00. Should this PSK be of interest to you, please inform us accordingly, and a detailed quotation will be prepared for your consideration as soon as the unit is received. We would be pleased to meet with you in your office or here in Morristown to discuss it with you.

We are very sorry about the difficulties you have obviously encountered which have prevented you from taking delivery of the PSK-2. We would again like to reassure you that K&E will make every effort to cooperate fully with you as we have done throughout this matter.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group - Photogrammetry



D. L. Michael
Marketing Manager

DLM/rb

*Imported
in Jan. 1975.*

AMEND RECORD DATA

KEUFFEL & ESSER COMPANY

6 August 1975

Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

Receipt of your letter of August 1, 1975, is hereby acknowledged. We sincerely regret the problems you have encountered with regard to the tax procedures you have used for the payments made toward your Zeiss PSK 2 Precision Stereocomparator; however, we cannot produce a letter which has never existed.

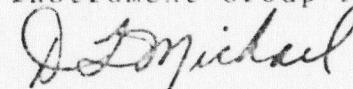
Furthermore, there would have been no reason for me to write such a letter saying exactly what Mr. Jordan's letter of February 28, 1972 said. At that time Mr. Jordan reported directly to me, and his letter was an official K&E response.

We cannot understand how another letter with the same contents as Mr. Jordan's letter, but signed by me, could possibly assist with your current problems even if it did exist. Since we cannot produce a nonexistent letter, the best we can offer is a copy of Mr. Jordan's letter along with a letter from me informing anybody concerned that Mr. Jordan's letter was written on behalf of K&E.

Please understand, Mr. Cooper, that we are as eager as you are to complete this transaction. You have my assurance that we will do all possible to be of assistance.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry



D. L. Michael
Marketing Manager

DLM:sb
Att.

cc: C. Sheaffer
D. Strickland

KEUFFEL & ESSER COMPANY

20 Whippany Road/Morrisstown, New Jersey 07960

6 August 1975

TO WHOM IT MAY CONCERN:

The letter dated February 28, 1972, to Mr. Franklin D. Cooper signed by Mr. Guenther W. Jordan, copy of which is attached, was written by Mr. Jordan on behalf of Keuffel & Esser Company, to whom Mr. Jordan was at that time assigned by Carl Zeiss of Oberkochen as a consultant. Keuffel & Esser Company was at that time and is presently the sole distributor for Carl Zeiss photogrammetric instruments in the United States.

Sincerely,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry

D. L. Michael
D. L. Michael
Marketing Manager

DEM:sb
Att.

KEUFFEL & ESSER COMPANY

20 Whippany Road/Morrisstown, New Jersey 07960

September 12, 1975

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt 14, New York 13214

Dear Mr. Cooper:

In response to your letter of September 3, 1975, Keuffel & Esser Company policy does not permit our participation in such private litigations or disputes.

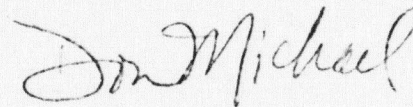
Furthermore, we have given you our full cooperation and have tried to be helpful to you.

However, we believe there is no further information which we have and which you do not have which would in any way help your case.

Per our numerous telephone conversations, we would like to resolve the matter of the PSK-2 stereo comparator promptly, and we hope that suitable arrangements can be made.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry



D. L. Michael
Marketing Manager

DLM/rb



KEUFFEL & ESSER COMPANY

20 Whippany Road, Morristown, New Jersey 07960

11 November 1975

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt 14, New York

Dear Mr. Cooper:

We are pleased to provide the information requested in your letter of 7 November 1975.

The Entry No. for the Zeiss PSK-2 Stereocomparator, Serial No. 121348, was ID7108 of 31 December 1972. Our customs broker was Airport Clearance Service, Inc., located at JFK Airport. The PSK-2 was imported for Keuffel & Esser Company. As you are aware, K&E was importing it for you.

We trust this information will fulfill your requirements and look forward to completion of your order.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry

D. L. Michael
Marketing Manager

DLM:sb



KEUFFEL & ESSER COMPANY

20 Whippany Road/Morristown, New Jersey 07960

20 October 1975

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

Confirming our telephone conversation of 17 October 1975, we wish to advise you that effective 31 December 1975, K&E will discontinue the distribution of Zeiss photogrammetric equipment in the United States. This includes, of course, the PSK 2 Stereocomparator, against which we have your deposit of \$63,563.00.

Arrangements are presently being made for the transfer of this inventory to Carl Zeiss Inc. of New York, who will become the Zeiss photogrammetric distributor. This transfer should be accomplished during the first week in December.

It is therefore urgent that final arrangements be completed for the payment or financing of the remainder of \$34,918.73 by 14 November 1975 in order for shipping and installation of your PSK 2 by K&E.

We realize what the acquisition of the PSK 2 means to you and sincerely hope that you can resolve your related problems or make other appropriate arrangements in this time.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry

D. L. Michael
Marketing Manager

DLM:sb



THE DEPARTMENT OF THE TREASURY
BUREAU OF CUSTOMS

BUFFALO, N.Y.



November 19, 1975

REFER TO
ENT 1-0:CV

Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, N. Y. 13214

Dear Sir:

Your letter of November 7, 1975 describes a situation wherein a PSK 2 Stereocomparator of German manufacture was exhibited in Ottawa, Canada, July - August 1972, dismantled by technicians of the manufacturer, and imported into the USA by Keuffel & Esser Company in Morristown, N. J. for the purpose of returning to Germany. You state that the machine had been purchased by your firm and should have been imported by Franklin D. Cooper rather than the Keuffel & Esser Company.

You ask whether any U.S. Customs regulation would have prevented your firm from importing the Stereocomparator providing the duties and surcharge had been paid.

Your letter provides only a rough outline of the details of this transaction and movement of merchandise. As a result our reply can be advisory only and should not be considered definitive.

However, based on the facts as we understand them, the importation of the PSK 2 Stereocomparator by your firm with payment of duties and surcharge would not appear to have violated U.S. Customs regulations.

If you require additional assistance or information, please contact this office.

Very truly yours,

Richard G. McMullen, Director
Classification & Value Division

CARL ZEISS, INC.

444 FIFTH AVENUE, NEW YORK, NEW YORK 10018, (212) 736-6070

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt 14, NY 13214

December 4, 1975

Dear Mr. Cooper:

Thank you for your letter of December 1, 1975. While I do not know where exactly Mr. Aust is at the moment, I can assure you, he is not in New York or Morristown.

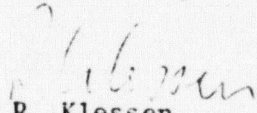
I myself am responsible for the transfer of the inventory from Keuffel & Esser, which will be undertaken in approximately two weeks.

I assume you would like to communicate with Mr. Aust regarding the PSK 2 you intended to purchase from Keuffel & Esser. I have been informed by Keuffel & Esser that the amount you paid will be refunded to you as soon as the instrument is handed over to us. We ourselves have decided not to stock the PSK 2 in New York and will return it to Germany.

I hope you will understand our position in this matter.

Sincerely,

CARL ZEISS, INC.


R. Klessen

Kle/rs

cc: D. Michael - K & E
Trae - SE Region

Your file Votre référence

Our file Notre référence 8552-1

Franklin D. Cooper,
Consulting Engineer,
321 Lansdowne Road,
Dewitt 14, New York,
U.S.A.

December 9, 1975

Dear Mr. Cooper:

This refers to your letter of November 7, 1975, addressed to the Deputy Minister of Customs and Excise, regarding Canadian Customs regulations respecting the exportation from Canada of goods temporarily imported for display or exhibition purposes.

Item 70000-1 to the Customs Tariff Act permits the temporary free entry into Canada of "goods imported for a period not exceeding three months for the purpose of display at a convention or public exhibition, held by an association not engaged in a business or a private or commercial character, at which the goods of various manufacturers or producers are displayed". It is stipulated that goods so imported must be either:

- (a) Exported from Canada at the conclusion of the exhibition or convention or within three months of their importation, whichever is the earlier;
- (b) Destroyed under Customs supervision;
- (c) Entered for warehouse upon termination of the exhibition; or
- (d) Entered for home consumption (payment of the applicable duties and taxes)

. . /2

There is, however, no requirement under Customs law that such goods be returned to the country of origin when exported from Canada. Exportation to any country is sufficient.

A copy of our Memorandum D4-2, "Display Goods Temporary Importation Order" outlining the regulations in this respect is enclosed for your information.

I trust that this information will clarify the matter to your satisfaction.

Yours truly,



R.P. Choquette,
International Traffic Division,
Headquarters Operations.

CARL ZEISS, INC.

444 FIFTH AVENUE, NEW YORK, NEW YORK 10018, (212) 736-6070

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt 14, NY 13214

December 16, 1975

Dear Mr. Cooper:

Pursuant to our telephone conversation of December 15, 1975, I am pleased to offer the following purchasing arrangement with respect to the PSK 2 to you.

1. The complete instrument would be sold to you at the originally quoted price of \$ 98,481.73, of that sum \$ 63,563.-- would be transferred to us from K & E. You would have to make immediate payment of \$ 24,918.73 to us. The remainder of \$ 10,000.-- due to us could be financed over a period of one year and paid by you in monthly or quarterly installments. The first 90 days without interest, the rest at an 8 % interest rate.
2. The instrument is due to arrive here in New York on the 18th of December and will be kept here until December 24, 1975; on that date it will be returned to Germany for credit, should it not be possible for you to arrange payment as outlined in 1.
3. While we appreciate your offer to have your downpayment of \$ 63,563.-- sent to us, we will not be in a position to avail ourselves of that offer unless you make payment of the additional \$ 24,918.73 prior to December 24, 1975.

I would appreciate hearing from you as soon as possible.

Sincerely,

CARL ZEISS, INC.

R. Klessen
R. Klessen

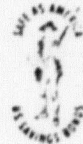
Kle/rs



DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.



DEC 17 1975

REFER TO
DRA-1-06-0:C:R

RM

Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt 14, New York

Dear Mr. Cooper:

Reference is made to your letter of December 9, 1975, inquiring whether drawback can be claimed by the manufacturer when the inventory is returned to him for shipment back to Oberkochen, Germany.

There is no authority under which drawback may be allowed since the imported merchandise received was the merchandise ordered.

The only provision of law under which a refund could be made Title 19, United States Code 1313(c) provides as follows:

"Upon the exportation of merchandise not conforming to sample or specification or shipped without the consent of the consignee upon which the duties have been paid and which have entered or withdrawn for consumption and, within ninety days after release from Customs custody unless the Secretary authorized in writing a longer time, returned to Customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties"

You will note the above provision of law requires that merchandise on which drawback is allowed must not conform to sample or specification.

Sincerely yours,

Richard Martinez
Senior Drawback Liquidator



Revenue Canada
Customs and Excise

Revenu Canada
Douanes et Accise

Your file Votre référence

Our file Notre référence 8552-1

Mr. Franklin D. Cooper,
Consulting Engineer,
321 Lansdowne Road,
Dewitt 14, New York 13214
U.S.A.

December 30, 1975

Dear Mr. Cooper:

This refers to your letter of December 16, 1975, and our recent telephone conversation regarding display goods at the International Society of Photogrammetry Conference held in Ottawa in the summer of 1972.

Ottawa records indicate that a shipment imported for this conference by Carl Zeiss Inc., Germany, was forwarded for export in bond to Montreal, Quebec on August 6, 1972. Unfortunately, since manifest documents are not retained beyond three fiscal years, no further information on the shipment in question is available.

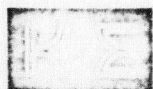
I regret that I cannot be of more assistance to you in resolving this matter.

Yours truly,

R.P. Choquette,
International Traffic Division,
Headquarters Operations.

Ottawa
K1A 0L5

Ottawa
K1A 0L5



KEUFFEL & ESSER COMPANY

20 Whippany Road, Morristown, New Jersey 07960

January 9, 1976

Mr. Franklin D. Cooper
321 Lansdowne Road
Dewitt, NY 13214

Dear Mr. Cooper:

This letter will confirm several items discussed during our telephone conversation of January 6, 1976:

- The PSK-2 Stereocomparator which K&E purchased from Zeiss-Oberkochen for resale to you has been turned over to Carl Zeiss, Inc., New York, New York.
- You are free of any obligation to K&E pertaining to this instrument.
- You should now complete the acquisition of this equipment directly from Zeiss-New York through Mr. R. Klessen.
- The money paid by you to hold this equipment, a total of \$63,563.00, is still in the possession of K&E.

Mr. Klessen has informed us of your request that K&E transfer your total deposit of \$63,563.00 over to Zeiss-New York. This is, of course, what we wish to do, but we cannot make this transfer without written authorization from you, and in the absence of such authorization, K&E's only other alternative would be to return the funds directly to you. In order to expedite the transfer, please return one signed and notarized copy of the enclosed authorization to me as soon as possible. After receipt of the executed copy, we will make the transfer of the funds held by K&E on account for you to Zeiss-New York.

Your prompt attention to this matter is in your best interests, as we are aware you do not want your deposit returned directly to you.

Very truly yours,

KEUFFEL & ESSER COMPANY
Instrument Group-Photogrammetry

Don Michael

D. L. Michael
Marketing Manager

DLM/rb
Enclosure

CC: R. Klessen

STATE OF NEW YORK)
) ss.
COUNTY OF ONONDAGA)

I, Franklin D. Cooper, hereby expressly request, direct and authorize Keuffel & Esser Company to transfer to Carl Zeiss, Inc., 444 Fifth Avenue, New York, New York, the sum of \$63,563.00, which sum represents all funds held in the possession of Keuffel & Esser Company on my account as of this date.

I acknowledge that upon completion of this transfer, Keuffel & Esser Company shall be relieved of all obligation, responsibility and liability to me for any and all funds held by Keuffel & Esser Company on my account as of this date.

March 2, 1976
Dated: ~~January 2, 1976~~

Franklin D. Cooper
Franklin D. Cooper

Subscribed and sworn to before me, a
Notary Public within and for the County
of Onondaga, State of New York, this 2nd
March
day of ~~January~~, 1976.

Genevieve M. Quinlan
Notary Public

GENEVIEVE M. QUINLAN
Notary Public in the State of New York
Qualified in Onondaga County, New York
My Commission Expires Mar. 31, 1978

CARL ZEISS, INC.

444 FIFTH AVENUE, NEW YORK, NEW YORK 10018, (212) 736-6070

Mr. F. D. Cooper
321 Lansdowne Road
Dewitt 14 New York

January 21, 1976

Dear Mr. Cooper;

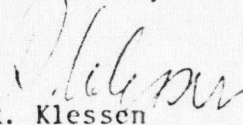
Thank you for sending us your check in the amount of
\$ 21,000.--.

You will receive a formal acknowledgement of your order as soon as we have received the transfer of the downpayment you have made to Keuffel & Esser. As Mr. D. Michael explained to you, K & E is waiting for a formal release from you. The instrument will be billed to you at a price of \$ 92,039.--. Of this amount you have paid \$ 84,563.--, still due to Carl Zeiss, Inc. is \$ 7,476.-- plus 4 % New York State Tax \$ 3,681.56 = total \$ 11,157.56. Please note, we cannot waive the sales tax unless you can provide us with a certificate of exemption.

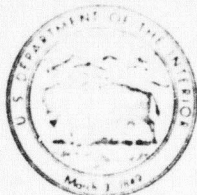
I would appreciate your letting me know which way you prefer to handle the remaining payments. As I indicated earlier, I would agree to an installment payment plan.

Sincerely,

CARL ZEISS, INC.


R. Klessen

Kle/rs



United States Department of the Interior

GEOLOGICAL SURVEY
RESTON, VIRGINIA 22092
National Center, MS 526

January 21, 1976

Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

This is in reply to your letter of December 23, 1975 in which you were seeking information about a Zeiss PSK2 stereocomparator which was exhibited at the 1972 ISP meeting held in Ottawa, Canada. The U.S. Geological Survey purchased a Zeiss PSK2 stereocomparator via Government contract from Keuffel & Esser (K&E) Company in February 1975. Information about the disposition of the comparator prior to delivery to the U.S. Geological Survey would have to be obtained from the K&E Company located at 20 Whippany Road, Morristown, New Jersey 07960.

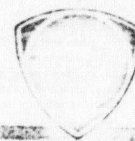
I am sure that the K&E Company will be happy to cooperate with you on this subject.

Sincerely yours,

A handwritten signature in cursive script, reading "Lowell E. Starr", is written over a horizontal line.

Lowell E. Starr
Chief, Branch of Research & Design
Topographic Division

National Society of Professional Engineers



2029 K STREET, N. W., WASHINGTON, D. C., 20006

January 29, 1976

Address Reply To:

OFFICE OF THE
PRESIDENT

Dear Sir:

After four years, NSPE is still holding the line for professional ethics against tenacious attacks by U.S. Justice Department attorneys. Our legal battle in defense of the NSPE code of ethics prohibiting competitive bidding is proving to be an increasingly expensive and time-consuming effort but, nevertheless, an effort which must be maintained.

Time and money--not legal logic--are perhaps the best weapons which the Justice Department wields over the engineering profession. By drawing out the case over a period of several years, Justice Department attorneys can hope for a victory by financial default, since their own funds for pursuing the case are unlimited.

The NSPE case has actually become the "cutting edge" of a broad and unrelenting attack by the Department of Justice on the ethical provisions of all professions. The original charges by the Justice Department claim that NSPE is in violation of the Sherman antitrust laws, but now government attorneys seem bent on proving that the NSPE code is a per se price-fixing violation. This, in fact, was the ruling of U.S. District Judge John L. Smith, Jr., on November 26, 1975, in NSPE's most recent round with the courts. We know this is completely off-base because NSPE publishes no fee schedules or other material that could be considered to encourage price-fixing.

The real issue of whether or not competitive bidding is or is not in the best interests of the public health and safety remains untouched. There has been no consideration of the reasonableness of this point, and it is an issue on which we must have a final answer. Under a new antitrust statute the case now goes to the Court of Appeals of the District of Columbia.

To date, the funds for the defense of this all-important ethical provision have come completely from private contributions from individuals and firms who believe strongly in what we are doing. The response of nearly \$450,000 has been tremendous--but then, so have the costs.

It is, therefore, time again to ask for your continued financial and moral support for this ethical battle which means so much to the profession and the public. With deep appreciation for your generous backing as this struggle goes on, we invite your attention to the enclosed suggested contribution guideline and transmittal form.

Very truly yours,

H. E. Bovay, Jr., P.E.
President

Enclosures

P.S. Our attorneys advise us that contributions to the NSPE Antitrust Defense Fund are deductible as ordinary and necessary business expense for Federal income tax purposes.

January 29, 1976

STATUS REPORT ON THE NSPE ANTITRUST CASE

Since our last direct communication on the status of the NSPE antitrust case there have been several significant developments. As you probably know from the press and magazine reports, in June 1975 the Supreme Court decided the Goldfarb Case, involving the legality of a mandatory fee schedule for legal services, holding that it was a violation of the Sherman antitrust act. There was a significant comment in that decision, however, in which the Supreme Court noted that:

"The fact that a restraint operates upon a profession as distinguished from a business is, of course, relevant in determining whether that particular restraint violates the Sherman Act. It would be unrealistic to view the practice of professions as interchangeable with other business activities, and automatically to apply to the professions antitrust concepts which originated in other areas. The public service aspect, and other features of the professions, may require that a particular practice, which could properly be viewed as a violation of the Sherman Act in another context, be treated differently.***"

Even though the Court added that it was not expressing any view on any other particular case or situation at that time, we were further encouraged when a week later the Supreme Court vacated the judgment against NSPE rendered by the District Court and remanded the case to the District Court for further consideration in light of its holding in the Goldfarb Case.

Subsequently, the NSPE Case was reargued in the District Court in November 1975. The District Court judge, however, issued a second adverse decision, insisting that the NSPE ethical provision opposing competitive bidding for engineering services is "price fixing," under the "per se" rule (i.e., without considering the evidence at the trial that the rule is supported by logic and reason to protect the public safety and health) even though NSPE does not have a fee schedule of any kind. He brushed over the Supreme Court comment in the Goldfarb Case, as quoted above, by construing it to apply only to "...valid self-regulatory 'restraints' such as membership requirements or standards of conduct," but without discussing the meaning of "standards of conduct" which may properly be the subject of ethical requirements in order to protect the public interest.

We have now filed our appeal in the United States Court of Appeals for the District of Columbia. Our attorneys are in the process of assembling the full record based on the original trial of the case and will thereafter prepare detailed briefs on the legal points in support of our position.

We are now seeking continued financial support to carry on the fight on behalf of our mutual professional dedication to uphold the right of our profession to embrace and advocate a policy which is basic to the concept that engineering services must be made available only on the basis of the public health and safety. The Department of Justice seeks to force our profession into the kind of rivalry which will necessarily bring about a lowering of the quality and standards which have enabled the engineering profession to provide the modern miracles of accomplishment for the public good.

KEUFFEL & ESSER COMPANY

20 Whippary Road, Morristown, New Jersey 07960

February 24, 1976

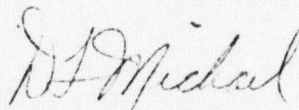
Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

Confirming our telephone conversation of February 18, 1976, this is to formally advise that unless Keuffel & Esser Company has received the authorization form fully executed by you on March 1, 1976, K&E will be left with no other alternative but to return to you all sums forwarded by you to K&E as a deposit on the Zeiss PSK-2 stereo comparator. I reiterate that it is absolutely necessary for K&E to have received the noted document from you by that time in order to finally resolve this long standing matter. Of course, upon our receipt of the authorization form, the deposit will be immediately transferred to Carl Zeiss, Inc. pursuant to your wishes.

Very truly yours,

KEUFFEL & ESSER COMPANY



D. L. Michael
Director-Instrument Group Sales

DLM/rb

KEUFFEL & ESSER COMPANY

20 Whippany Road/Morristown, New Jersey 07960

12 March 1976

Mr. Franklin D. Cooper
Consulting Engineer
321 Lansdowne Road
Dewitt, New York 13214

Dear Mr. Cooper:

Thank you for returning the authorization for K&E to transfer your deposit toward the Stereo Comparator to Carl Zeiss, Inc., of New York. A check in the amount of \$63,563. was turned over to Mr. Klessen on 3/11/76. A copy of my letter to Mr. Klessen is enclosed, which Mr. Klessen has signed to acknowledge receipt of the check.

We regret that due to circumstances beyond our control K&E was unable to complete this sale for you; however, I am certain that you will obtain the utmost in cooperation from Carl Zeiss. We wish you the best of luck.

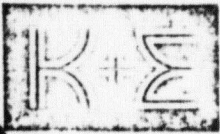
Sincerely,

KEUFFEL & ESSER COMPANY



D. L. Michael
Director
Instrument Group Sales

DLM:sb
Enc.



KEUFFEL & ESSER COMPANY

20 Whippany Road / Morristown, New Jersey 07960

March 11, 1976

Mr. R. Klessen
Vice President-Operations
Carl Zeiss, Inc.
444 Fifth Avenue
New York, NY

Dear Mr. Klessen:

Pursuant to our various telephone conversations concerning Mr. Franklin D. Cooper and his purchase of the Zeiss PSK-2 Stereo Comparator, I am enclosing herewith Keuffel & Esser Company Check No. 286781 dated March 11, 1976, made payable to the order of Carl Zeiss, Inc. in the sum of \$63,563.00, which sum represents the entire amount of funds deposited on account with Keuffel & Esser Company by Mr. Cooper toward the purchase of this instrument. Mr. Cooper has expressly authorized K&E to transfer these sums to Carl Zeiss, Inc., since your company will be handling all further negotiations concerning this transaction. I am also enclosing herewith a copy of Mr. Cooper's authorization to K&E to make the transfer. Please make the necessary arrangements to credit Mr. Cooper's account with your firm in the sum of \$63,563.00.

Please acknowledge receipt and acceptance of this letter and the enclosed check by executing the enclosed copy of the letter in the appropriate place and returning the same to me.

Very truly yours,

KEUFFEL & ESSER COMPANY

D. L. Michael

Director-Instrument Group Sales

Received and Accepted

CARL ZEISS, INC.

R. Klessen

BEST COPY AVAILABLE

CC: ☒ F. D. Cooper